

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TRACY N. PARNELL,

Petitioner,

vs.

SCOTT R. FRAKES,

Respondent.

8:20CV352

MEMORANDUM AND ORDER

This matter is before the court on the motion of Petitioner, by and through his counsel, to file an amended petition for a writ of habeas corpus. (Filing 22.) In his motion to amend and the attached proposed amended petition, counsel for Petitioner seeks to clarify the constitutional grounds for relief and citations to the existing record. For good cause shown, the court will allow the amendments. The petition, as amended, asserts two claims:

Claim One: The Nebraska district court and Nebraska Supreme Court have denied Petitioner an evidentiary hearing and granted a new trial on the ground that the State withheld exculpatory evidence which was discovered by accident in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Claim Two: The Nebraska district court and Nebraska Supreme Court have denied petitioner an evidentiary hearing on the issue of ineffective assistance of trial counsel in failing to call O’Kelly as a witness, although O’Kelly had not yet performed the essential “drive” test, among others, at the time of the trial and grant relief in the form of a new trial

in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

(Filing 22 at CM/ECF p. 12.)

In light of the amendments, the progression of this matter is revised as set forth below.

IT IS THEREFORE ORDERED that:

1. Petitioner's motion to amend his habeas petition (filing 22) is granted. Counsel for Petitioner shall promptly file the amended petition. *See* NECivR 15.1(c).

2. By **July 6, 2021**, Respondent shall file an answer to the amended petition along with a separate brief and any additional relevant state court records, if necessary.¹ The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **July 6, 2021**: deadline for Respondent to file answer and separate brief.

3. After Respondent files an answer and brief, Petitioner shall have 30 days to file and serve a brief in response.

4. Respondent shall have 30 days after Petitioner's brief is filed to file and serve a reply brief. In the event that Respondent elects not to file a reply brief, he should inform the court by filing a notice stating that he will not file a reply brief and that the merits of the petition are therefore fully submitted for decision.

¹ The court understands that Respondents have filed all relevant state court records in this matter. (Filing 14; Filing 17 at CM/ECF p. 2, ¶ 9.)

Dated this 4th day of June, 2021.

BY THE COURT:

A handwritten signature in blue ink that reads "Richard G. Kopf". The signature is written in a cursive style with a large, stylized "R" and "K".

Richard G. Kopf
Senior United States District Judge